

**STATE OF MONTANA
DEPARTMENT OF ADMINISTRATION
ARCHITECTURE AND ENGINEERING DIVISION
STANDARD FORM OF CONTRACT BETWEEN
OWNER AND CONTRACTOR FOR CONSTRUCTION
FOR CONTRACTS BETWEEN \$75,000 AND \$25,000**

THIS CONTRACT IS SUBJECT TO ARBITRATION PURSUANT TO
THE UNIFORM ARBITRATION ACT, MCA TITLE 27 CHAPTER 5

This CONTRACT made as of [DATE] between [CONTRACTOR] hereinafter called the CONTRACTOR, and the STATE OF MONTANA, acting by and through it's DIRECTOR, DEPARTMENT OF ADMINISTRATION, hereinafter called the OWNER. WITNESSETH, that the Contractor and the Owner for the consideration hereinafter named agree as follows:

ARTICLE 1. SCOPE OF WORK

The Contractor shall perform all the Work as follows:

ARTICLE 2. TIME OF COMPLETION

The Work to be performed shall commence on the date set forth in this Contract and shall be completed within [NUMBER OF DAYS] CONSECUTIVE CALENDAR DAYS.

ARTICLE 3. THE CONTRACT SUM

The Owner shall pay the Contractor in current funds for the performance of the Work, subject to additions and deductions by Change Order or liquidated damages as provided in the Contract Documents, the Contract Sum of: DOLLARS (\$..00).

ARTICLE 4. PROGRESS PAYMENTS

The Owner shall make payments on account of the Contract as follows: Ninety percent (90%) of the portion of the Contract Sum for labor, materials and equipment incorporated in the work and of materials suitably stored at the project site or at some other location agreed upon in writing. The Owner shall make payment within thirty (30) calendar days after receipt of Form 101, Periodic Estimate for Partial Payment request, subject to review and approval. The Contractor shall, within seven (7) days following receipt of payment from the Owner, make payment to the

Subcontractor(s), less any retainage as provided between the Contractor and Subcontractor(s).

ARTICLE 5. FINAL PAYMENT

Final payment constituting the entire unpaid balance of the Contract Sum, shall be paid by the Owner to the Contractor when: 1) the Work has been completed; 2) the Contract fully performed; and 3) an Affidavit on Behalf of the Contractor form is submitted.

ARTICLE 6. VENUE

In the event of litigation or arbitration concerning the Contract, venue shall be the First Judicial District in and for the County of Lewis and Clark, Montana, and the Contract shall be interpreted according to the laws of Montana.

ARTICLE 7. MISCELLANEOUS

1. Taxes/Permits/Fees. The Contractor shall secure and pay for all permits and inspections, give all notices, pay all taxes and fees and comply with all laws, ordinances, rules, regulations and lawful orders bearing on the performance of the work.
2. Labor/Materials Equipment. Unless otherwise specified, the Contractor shall provide and pay for all labor, materials, equipment, tools, utilities, transportation, temporary construction and services for the proper execution and completion of the work. Unless otherwise specified, all material and equipment provided shall be new and in good condition. All workmanship shall be of good quality and in keeping with the standard of the respective trades.
3. Hiring Preference and Montana Products Preference. Products manufactured or produced in the State of Montana by Montana industry and labor shall be preferred for use in this project and in all materials, supplies, and equipment procured if such products, materials, equipment, and supplies are comparable in price and quality as prescribed in 18-1-112, Montana Code Annotated. For state construction projects within an Indian reservation, hiring preference will be given to Indian residents of the reservation who have substantially equal qualifications for any position. This preference will apply unless federal law specifically prohibits residency preference.
4. Insurance. The Contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the Contractor, its agents, employees, representatives, assigns, or subcontractors.
 - a. Hold Harmless and Indemnification: the Contractor agrees to protect, defend, and save the state, its elected and appointed officials, agents, and employees harmless

from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the contractor, its agents, employees or any third parties on account of bodily or personal injuries, death, or damage to property arising out of services or work performed or omissions or work or in any way resulting from the acts, negligent or otherwise, or omissions of the contractor, its agents, employees, assigns, and/or subcontractors under this Contract.

- b. Contractor's Insurance: **insurance required under all sections herein shall be in affect for the duration of the contract.** Insurance required herein shall be provided by insurance policies issued only by insurance companies currently authorized to do business in the state of Montana. No Contractor or Sub-contractor shall commence work under this contract until all required insurance has been obtained. During the term of this contract, the Contractor shall, not less than thirty days prior to the expiration date of any policy for which a certificate of insurance is required, deliver to the Owner a certificate of insurance with respect to the renewal insurance policy. The Contractor shall furnish one copy of insurance certificates of insurance herein required, which shall specifically set forth evidence of all coverage required by these contract documents and which shall be signed by authorized representatives of the insurance company or companies evidencing that insurance as required herein is in force and will not be canceled, limited or restricted without thirty days' written notice by certified mail to the contractor and the Owner. The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage or limits. Additionally, all certificates shall include the project name and A/E project number.
- c. The Contractor shall carry **Workers' Compensation Insurance**. Such Workers' Compensation Insurance shall protect the Contractor from claims made by his own employees, the employees of any Sub-contractor, and also claims made by anyone directly or indirectly employed by the Contractor or Sub-contractor. The Contractor shall require each Sub-contractor similarly to provide Workers' Compensation Insurance.
- d. The Contractor shall carry occurrence coverage **Commercial General Liability Insurance** including coverage for premises; operations; independent contractor's protective; products and completed operations; broad form property damage and comprehensive automobile liability insurance with not less than the following limits of liability:

\$1,000,000 per occurrence; aggregate limit of \$2,000,000

The **Commercial General and Automobile Liability Insurance** shall provide

coverage for both bodily injury, including accidental death and property damage which may arise out of the work under this contract, or operations incidental thereto, whether such work and operations be by the Contractor or by any Subcontractor or by anyone directly or indirectly employed by the Contractor or by Sub-contractor, or by anyone for whose acts any of them may be liable. The Contractor shall maintain completed operations liability insurance required herein for a period of not less than one year after final payment or anytime the Contractor goes on to the location of the project.

- i. The Contractor's liability insurance policies shall list the STATE OF MONTANA as an additional insured. The STATE OF MONTANA includes its officers, elected and appointed officials, employees and volunteers and political subdivisions thereof. Should the Contractor not be able list the state as an additional insured, the Contractor shall purchase a per occurrence Owner's/Contractor's Protective Policy (OCP) with the STATE OF MONTANA as the insured party in the same occurrence and aggregate limits as that indicated above for the Contractor's Commercial General Liability Policy.
- ii. Property damage liability insurance shall be written without any exclusion for injury to or destruction of any building, structure, wires, conduits, pipes, or other property above or below the surface of the ground arising out of the blasting, explosion, pile driving, excavation, filling, grading or from the moving, shoring, underpinning, raising, or demolition of any building or structure or structural support thereof.
- iii. The Contractor's insurance coverage shall be PRIMARY insurance as respects the state, its officers, elected and appointed officials, employees and volunteers. Any insurance or self-insurance maintained by the state, its officers, elected and appointed officials, employees and volunteers shall be excess of the Contractor's insurance and shall not contribute to it.

5. Construction Contractor Registration. The Contractor is required to be registered with the Department of Labor & Industry under 39-9-201 and 39-9-204 MCA PRIOR to the Contract being executed by the State of Montana for all projects greater than \$2,500.00 and a copy of the registration certificate must be provided the Owner.

6. Performance, Labor and Material Payment Security

- a. The Owner shall require the successful bidder to furnish a Performance Bond in the amount of 100% of the contract price as security for the faithful performance of his

contract. (18-2-201, Montana Code Annotated).

- b. The Owner shall require the successful bidder to furnish a Labor and Material Payment Bond in the amount of 100% of the contract price as security for the payment of all persons performing labor and furnishing materials in connection therewith. (18-2-201, Montana Code Annotated).
- c. The bonds shall be executed on forms furnished by the Owner; no other forms will be acceptable.
- d. The bonds shall be signed in compliance with state statutes. (33-17-1111, Montana Code Annotated).
- e. Bonds shall be secured from a state licensed bonding company.
- f. The successful bidder may, in lieu of a surety bonds, provide the following securities in an amount equal to the contract price for both payment and performance security:
 - i. Lawful money of the United States;
 - ii. A cashier's check, certified check, bank money order, or bank draft, drawn or issued by any banking corporation incorporated under the laws of the State of Montana or by a national banking association located in Montana;
 - iii. Or, certificates of deposit or money market certificates issued by any bank or savings and loan association licensed to do business in Montana.
- g. The Owner shall retain such security for a time period of four (4) months after completion and acceptance of the Project by the Owner and shall retain 25% of such security for eight (8) months thereafter.

7. Power of Attorney

Attorneys-in-fact who sign contract bonds must file with each bond a certified and effectively dated copy of their power of attorney:

- a. One original copy shall be furnished with each set of bonds.
- b. Others furnished with a set of bonds may be copies of that original.

8. Notice To Proceed

The successful bidder who is awarded the contract for construction will not be issued a Notice To Proceed until there is a signed Contract, Performance and Labor & Material

bonds, the specified insurance certificates and a copy of the bidder's current Construction Contractor Registration Certificate in the Owner's possession.

9. Labor and Wages

- a. In any contract in excess of \$25,000 let for state work, the Contractor shall give preference to the employment of bona fide Montana residents in the performance of the work and shall pay the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions in effect and applicable to the county or locality in which the work is being performed. (18-2-403, Montana Code Annotated).
- b. On any state construction project in excess of \$25,000 funded by state or federal funds, except a project partially funded with federal aid money from the United States Department of Transportation or where residency preference laws are specifically prohibited by federal law and to which the state is a signatory to the construction contract, at least 50% of the work must be performed by bona fide Montana residents, as defined in 18-2-401, Montana Code Annotated.
- c. The Commissioner of The Montana Department of Labor and Industry has established the standard prevailing rate of wages in accordance with 18-2-401 and 18-2-402, Montana Code Annotated. A copy of the Rates, entitled "State of Montana, Prevailing Wage Rates", are bound herein. (If applicable)
- d. If the contract is in excess of \$25,000, the Contractor shall classify all workers in the project in accordance with the "State of Montana, Prevailing Wage Rates." In the event the Contractor is unable to classify a worker in accordance with these rates he shall contact the Department of Labor and Industry, Employment Relations Division, P.O. Box 1728, Helena, Montana 59620, (406) 444-5600 for a determination of the prevailing wage rate to be paid that particular worker.
- e. The Contractor shall be responsible for obtaining wage rates for all workers in the project prior to their performing any work on the project.

10. Equal Employment Opportunity. All hiring and other employment practices shall be non-discriminatory, based on merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.

11. Record Keeping. Payrolls and basic records pertaining to the project shall be kept on a

generally recognized accounting basis and shall be available to the Owner, Legislative Auditor, the Legislative Fiscal Analyst or his authorized representative at mutually convenient times. Accounting records shall be kept by the contractor for a period of three years after completion and acceptance of the project by the Owner.

This Contract entered into as of the day and year first written above:

CONTRACTOR:

(Company)

(Signature) (Title)

Taxpayer's I.D. No. _____

Contractor's Registration Certificate No. _____

Date: _____

Is this firm incorporated? _____ no _____ yes

OWNER:

STATE OF MONTANA
DEPARTMENT OF ADMINISTRATION

Director

Date